Before the
Federal Communications Commission
Washington, D.C. 20554

In the matter of	)	
	)	
High-Cost Universal Service Support	)	**WC Docket No. 05-337**
	)	
Federal-State Joint Board on Universal Service	)	**CC Docket No. 96-45**

Reply Comments of the
Montana Public Service Commission

I. Introduction and Summary

The Federal Communication Commission's ("FCC's") April 8, 2009 Notice of Inquiry ("NOI") seeks to refresh the record regarding the issues raised by the United States Court of Appeals for the Tenth Circuit (Tenth Circuit) in the Qwest II decision. In this NOI the FCC allowed for both initial and reply comments. The NOI provides some background information including a high level summary of the proposals certain parties had previously made. Qwest Communications International, Inc (Qwest in these reply comments) filed initial comments on May 8, 2009 as did the Vermont Public Service Board and Maine Public Utilities Commission (VM in these reply comments).

The Montana Public Service Commission (MTPSC) was an intervenor before the Tenth Circuit in the petitions for review of the FCC's Order on Remand. The MTPSC has a vested interest in the outcome of this FCC NOI. The MTPSC submits these reply comments regarding the Qwest and VM initial comments. We thank the FCC for the commitment it is now showing to begin to resolve issues that have languished for years.

II. Discussion

In their respective initial May 8, 2009 comments Qwest and VM stake out their respective positions on how the FCC should remedy the ills that the Tenth Circuit identified in the FCC's Order on Remand. The MTPSC does not wholeheartedly endorse either party's comments but the MTPSC finds aspects of each of VM's and Qwest's proposals to identify policies and issues that should be integral to the FCC's resolution of the Tenth Circuit Remand. We will identify certain points of agreement and disagreement between Qwest and VM and on each we will provide our reply comments.

First, as for how the FCC must ensure there is sufficient support, both VM and Qwest agree that support should derive from a cost analysis, not a rate comparison analysis. Qwest states that costs, not rates, should be the basis for allocating high cost support. See p. 6. VM comment that the FCC should affirm its prior findings that costs are a more reliable basis than rates to determine federal universal service fund (FUSF) support. See p. 18. This is a central issue on which the MTPSC concurs. In the MTPSC's experience a rate comparison of urban and rural rates is a minefield in which agreement will not likely be reached. We have previously identified the difficulty involved in making such rate comparisons and our view is unchanged.[1] The FCC must stay the course and base FUSF support on cost comparisons as VM and Qwest have proposed. As for implementation of this issue on which there is agreement there are nuanced issues on which there are disparate views.

Second, VM and Qwest also appear to agree that with any revision to the high cost model cost (HCM) mechanism for universal service support the FCC must ensure that support is sufficient to preserve and advance the goals of universal service. That is about the extent to which they agree. Qwest proposes to target support to non-rural areas with the greatest need. VM, on the other hand, propose a lower benchmark mechanism and add that any standard in excess of 125% will not meet the test for reasonable comparability. VM support a range of 115% to 125%. VM would also change the national average cost basis to a national urban cost basis which would continue to be compared to statewide average costs. Thus, Qwest favors simply targeting high cost model support to high cost areas. VM argue that the statewide averaging of costs must continue as only the FCC can reduce costs for a state with high average costs.

[1] See MTPSC Chairman Greg Jergeson's September 29, 2008 certification letter to Ms. Marlene H. Dortch of the FCC and Ms. Karen M. Majcher of USAC.

The MTPSC finds interesting the VM proposal to continue comparing statewide average costs to national average urban costs.[2] The MTPSC's comments include several arguments. In Montana, Qwest's basic rates are reasonably comparable and they serve to preserve and advance universal service: Qwest has the same statewide average rates throughout Montana for basic services that are price regulated.[3] As Montana and other states with high-cost non-rural carriers cannot pick themselves up by their own bootstraps if they have high costs, sufficient FUSF support is essential so that rates in high cost rural areas are comparable to rates in urban areas of the nation. That is, HCM support is intended to make reasonably comparable those rates in rural high cost areas within a state to rates for comparable service in low cost urban areas elsewhere in the nation. The VM and Qwest proposals address sourcing HCM support and not how HCM support is used. The MTPSC has no evidence of Qwest having voluntarily targeted FUSF support to high cost rural areas in Montana or to any customer class that receives inferior service quality.

Aside from how Qwest uses HCM FUSFs, if the FCC targets support to individual areas as Qwest suggests, there is absent in Qwest's proposal any benchmark proposal. Qwest even states there is no direct correlation between basic rates and costs. See p. 16. Because Qwest's proposal does not discuss or use a cost benchmark, it is unclear if Qwest continues to endorse one that is similar to the FCC's national average cost plus two standard deviations benchmark, some other benchmark or no benchmark. The MTPSC finds the lack of a bridge between costing and pricing, involving a benchmark, to not refresh this record. Rather, it leaves hanging the resolution of a major issue in the Tenth Circuit Remand. This aspect of Qwest's initial comments leaves in place a vacuum. There is a related consequence involving the impact of an unconstrained (no benchmark) FUSF. VM hold that Qwest has acknowledged that its proposal to target FUSF support would inflate the FUSF size by $1.2 billion. In contrast, the VM proposal

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[2] In the past, the MTPSC has not supported cost averaging due to the associated implicit subsidies. See MTPSC's December 4, 2004 Reply Comments in the Federal-State Joint Board's inquiry relating to high-cost Universal Service Support; CC 96-45.

[3] The exception is with the majority of basic service subscriptions that are bundled (packaged) with non-basic services where Qwest is allowed to price the bundle at any level so long as the price exceeds the cost. See MTPSC Order No. 6889n, in D2008.1.6.

features a benchmark revision of no greater than 125%. Still, it is not apparent what the impact on the FUSF will be if the VM proposed benchmark was adopted.

Third, VM and Qwest appear to disagree on how to redefine the principle of reasonable comparability. At present, the FCC finds that if rural rates are within two standard deviations of the national urban rate, they are reasonably comparable. <u>See</u> p. 11. Qwest further comments that the FCC must not only define the term with respect to preserving universal service but also with respect to advancing universal service; universal service must also consider comparable service quality. <u>See</u> p. 7. Qwest unambiguously suggests comparing rural and urban rates on a <u>within</u>-state basis, adding there is no requirement to make a nationwide comparison. <u>See</u> pp. 7, 11, 12. VM comment that rates are reasonably comparable when rural rates, on a statewide basis, do not exceed 125% of urban rates. VM further comment that states are primarily responsible for cost differences <u>within</u> their own borders while the federal role is limited to shifting support between low- and high-cost states. <u>See</u> pp. 3, 8-9. For reasons given above, regarding Qwest's cost targeting and VM's cost averaging proposals, the MTPSC opposes Qwest's proposal to base reasonable comparability on a <u>within</u> state basis. The MTPSC is opposed as Qwest's proposal suffers from the inability of a non-rural carrier to bootstrap its way out of a high cost situation. MTPSC also doubts that by the reasonable comparability principle in Section 254 Congress meant that comparisons ought to be done on a <u>within</u> state basis: Would a non-rural carrier in a state with the same rural and urban rates then have no apparent need for FUSF support even if it is high cost? Conversely, if the rates differed but the non-rural carrier had low costs should it receive no FUSF support?

VM's redefinition of reasonably comparable, although stated in terms of rates, only appears rational when viewed from a cost perspective. In fact, VM later clarified that their redefinition proposal is to be implemented with reference to costs and not rates. <u>See</u> especially p. 14, but also pp. 3, 5, 6 and 7. Therefore, the MTPSC believes the FCC should give consideration to VM's reasonable comparability analysis that is applied to the average urban cost and not the nationwide average cost. The Tenth Circuit's Remand of the FCC's 1999 order actually rejected Qwest's argument that use of statewide averaging is necessarily inconsistent with Section 254.

Fourth, as for the issue of encouraging broadband, VM commented that the FCC should coordinate related initiatives, including broadband deployment, adding that DSL and broadband deployment in their non-rural carrier's service areas significantly lags that of local rural carriers. In regard to broadband deployment, VM add that the FCC must determine if it will support its deployment through the universal service program. And, in order to expedite any such consideration the FCC should either refer the issue to the universal service joint board (USJB) or solicit the USJB's comments. See pp. 2, 3, 4. Qwest commented, in part, that any universal service support for broadband should be through a separate funding mechanism. Qwest finds that it is time to add universal access to broadband services through universal service support by means of support for initial construction. See p. 5.

The MTPSC agrees with Qwest. There is no alternative but to apply the Section 254 process prior to providing universal service support for broadband. The MTPSC has previously filed comments supporting the consideration of broadband as a supported service.[4]

As for Qwest's broadband service offerings, Qwest states that it has achieved about 86% penetration in its (14 state) region. See p. 18. In contrast, in Montana, Qwest has only achieved 74% DSL penetration, a percentage that is likely exaggerated due to unserved areas in served exchanges.[5] Need obviously exists for a certifiable standard metric of what broadband is and how penetration is measured. As Qwest's Montana service area significantly lags other Qwest service areas in terms of broadband penetration it is imperative for the FCC to quickly take broadband through the Section 254 process so that it is a supported service and Montana can have reasonably comparable access to broadband similar to that which is available in more urban areas of our country. The process of establishing FUSF support for broadband will necessarily involve a competitive issue of to whom the support is availed.

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[4] See MTPSC's July 2, 2007 Reply Comments to the Federal-State Joint Board in the matter of long-term comprehensive high-cost universal service reform; CC 96-45, WC 05-337.

[5] See April 22, 2009 Qwest filing in MTPSC docket number D2008.1.6.

Fifth, VM proposes to use "Adjusted Model-Based Costs" to ensure that the FCC applies support only for carrier plant used for supported services. See pp. 12-14. With VM's "Adjusted Model-Based Cost" a carrier's forward looking support should be reduced by amounts associated with "non-supported services." The FCC should remove, or allocate away, a portion of the loop cost revenue requirement from the model-derived loop cost associated, for example, with DSL as well as switching costs used to provide enhanced and ancillary services. In the case of DSL or broadband services, the higher the throughput or bandwidth the larger the percentage of a line's loop costs that should be removed, in effect allocating facility costs associated with broadband to those services. The result would be that the "Adjusted Model-Based Costs," net of support, must be reasonably comparable for rural and urban areas. See p. 14. In contrast, Qwest finds too complex VM's "Net Subscriber Cost" proposal (that VM has now abandoned). Qwest has yet to comment on VM's revised "Adjusted Model-Based Costs" proposal. See p. 10.

The MTPSC urges the FCC to take a longer term perspective on the merits of VM's "Adjusted Model-Based Costs" proposal. Given the near certainty with which broadband will become a supported service, the FCC would not want to double count costs associated with broadband, as the result would be a greater than necessary FUSF for basic service. The FCC should give serious consideration to the VM proposal

Sixth, as for cost modeling, VM assert that even if the FCC set a reasonable comparability percentage, carriers still will not receive sufficient support if the FCC's cost model is not a reasonably accurate estimate of forward looking costs. See pp. 2, 9-12. Qwest disfavors the adoption of a new, forward looking cost model due to the associated and significant time and resource cost. See p. 10.

The MTPSC finds merit in the VM proposal to make improvements to the cost model. If the FCC only improves upon the delivery system of HCM support, but the basis of the support is inherently flawed, then not much progress will be made. Qwest is rightly concerned, however, about implementation delays. The FCC should make this entire effort a high priority, especially given the length of time that has already languished.

Seventh, VM do not support an overall cap on high-cost funding. See p. 22. The MTPSC agrees with this VM comment. The MTPSC opposed the interim cap the FCC put in place at the Joint Board's request and we remain opposed. The implementation of the interim cap has, as we predicted, jeopardized the expansion of wireless services. A wireless carrier that the PSC previously designated as an ETC is now facing difficulty achieving the PSC's targeted coverage obligation and seeks to extend the deadline to comply, a direct result of the FCC's interim cap.

III. Summary

We thank the FCC for the commitment to begin resolving Tenth Circuit Remand issues that have languished for years. The FCC has no less an arduous task today than it had with the first Tenth Circuit Remand. Because of the amount of time that has lapsed since the Tenth Circuit's second (Q-II) Remand, the complexity of issues the FCC should address, as we note above, in fact has ramped up a couple notches. Still, the FCC has an obligation to attempt to clear the table of issues raised by the Tenth Circuit's Q-II Remand.

The FCC may not be able to ever make a perfect link between reasonable cost comparability and reasonable rate comparability. The divisive issue of targeting vs. continued use of average state costs may only be reconcilable in terms of an agreement among the parties of a pragmatic result that they agree satisfies the Tenth Circuit Remand's concerns. The FCC might consider such an approach. Otherwise, a Q-III Remand may be just around the corner. The FCC does need to begin integrating into the existing matter recognition of broadband's importance to both consumers and to the economy. Recognition of and avoidance of duplicative broadband costs in two different support mechanisms should not be delayed. Finally, the FCC does need to end the interim cap on FUSF support.

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Montana Public Service Commission

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